Supreme Court, U.S.
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No. 00-83

IN THE

Supreme Court of the United States

ROBERT CONTINI; JOHN BARNES; MARTIN GILLEN; JOHN KROMMENHOEK; RICHARD MILLER; JERRY MCCORMICK; LAWRENCE MCDERMOTT; JOHN DOE (name being fictitious); TEAMSTERS LOCAL 641 PENSION FUND; PETER VAN LENTEN; ROBERT CIRONE, as Trustee of the Teamsters Local 641 Pension Fund; THOMAS FLANNERY, Trustee of the Teamsters Local 641 Pension Fund,

Petitioners,

v.

STANLEY SMITH,

Respondent.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF IN OPPOSITION

DAVID TYKULSKER, ESQ.*
DAVID TYKULSKER & ASSOCIATES
161 Walnut Street
Montclair, New Jersey 07042
(973) 509-9292

Counsel for Respondent Stanley Smith

* Counsel of Record

WILSON-EPES PRINTING CO., INC. – (202) 789-0096 – WASHINGTON, D. C. 20001

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QUESTIONS PRESENTED

The questions presented by the Petitioners in the Petition ("Pet.") at (i) are incomplete, misleadingly phrased and not faithful to the proceedings below. The precise questions presented for review in this case are the following:

Do the minimum vesting standards set forth in Section 203 of the Employee Retirement Income Security Act of 1974 as amended ("ERISA"), 29 U.S.C. § 1053, apply to a multi-employer pension plan subject to ERISA's requirements when that fund offers a pro rata pension benefit?

If an ERISA-governed pension plan has voluntarily agreed to count as service within its jurisdiction all years of service earned by a participant within the jurisdiction of another such plan, may that pension plan then disregard such service in derogation of its plan documents because such service was rendered to an employer that did not maintain the plan or a predecessor plan?

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REASONS FOR DENYING THE PETITION FOR WRIT OF CERTIORARI

The Petition presents no issue worthy of the Court's attention. Petitioners make no attempt to show that the decision of the Court of Appeals in this case is in conflict with a decision of this Court, any other Court of Appeals, a District Court or a State Court of last resort. *See* Supreme Court Rule 10(a). As demonstrated in Argument I, every court that has considered the matter has found that ERISA's substantive rules, including vesting rules,[1] apply when a multi-employer plan offers pro rata type pensions. Indeed, the Third Circuit's opinion is entirely consistent with *Alessi v. Raybestos-Manhattan, Inc.*, 451 U.S. 504 (1981), this Court's principal opinion interpreting 29 U.S.C. §1053. It is notable that *Alessi* goes unmentioned in the Petition.

In apparent recognition of the inherent weakness of their case for certiorari, petitioners allege that this case poses an important federal question. This contention cannot withstand even minimal scrutiny. In finding that ERISA's vesting schedules govern multi-employer pension plans offering pro rata pensions, the Third Circuit merely applied the plain statutory definitions—an effort that consumed all of one paragraph of the opinion, *see* Pet. App. A at 12a. That application is entirely consistent with the statute's policy and this Court's determination that the vesting schedules of 29 U.S.C. § 1053 schedules are "critical to the ERISA scheme," *see Alessi*, 451 U.S. at 510; *Nachman Corp.*, supra at n.1, 446 U.S. at 363-64 and n.6.

With regard to the "disregard issue", as demonstrated in Argument II, as petitioners did not in fact disregard Smith's service in the Related Pension Funds, there is no reason for

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[1] For ERISA purposes, the terms "nonforfeitable" and "vested" are used synonymously. *See Nachman Corp. v. Pension Benefit Guaranty Corp.*, 446 U.S. 359, 377 (1980).

this Court to take up the hypothetical case that petitioners would present. Even were the record different, the legislative history makes it clear that once a pension fund agrees to count service for purposes of calculating the amount of the benefit to be paid, it must also count such service when it determines eligibility.

Finally, as petitioners never asserted in either the District Court or the Court of Appeals that significant financial consequences would ensue from the reformation of the Local 641 Fund required by the Third Circuit, the record is utterly devoid of any evidence bearing on such an assertion. Not only does such lack of evidence belie the assertion of its importance, but also, this Court should not consider this previously unraised argument for the first time.

STATEMENT PURSUANT TO SUPREME COURT RULE 15(2)

The Local 641 Fund, the Local 202 Fund and the Local 816 Fund are multiemployer defined benefits pension funds within the meaning of 29 U.S.C. § 1002(a)(2) and (37). Prior to the enactment of ERISA, the Local 641 Fund had entered into reciprocal agreements with the Local 202 and the Local 816 Funds whereby "service in the jurisdiction of any of the reciprocating funds is considered service under this Fund for the purpose of determining eligibility for benefits under the [Local 641] Fund." The Local 641 Fund documents explain that these reciprocal agreements provide the basis for provision ~~of a pro~~ rata pension whose "purpose" is explained in the Local 641 Fund Plan as follows:

> *PURPOSE*. Pro-Rata Pensions are provided under this Plan for Employees who would otherwise be ineligible because their years of employment have been divided between Covered Employment and employment covered by another pension plan or whose pensions would

> otherwise be in less than the full amount because of such division of employment.

The Local 641 Fund, in keeping with ERISA, offers other forms of pension for participants who have accrued a minimum of ten years of credits in Covered Employment i.e., with employers contributing to the Local 641 Fund. Hence, a principal purpose of the pro rata pension is to allow a participant who has less than ten years of Covered Employment to combine the Related Pension Credits with the credits from Covered Employment so as to be entitled to a pension. Related Pension Credits are those credits earned in the Related Plans, those multiemployer pension funds who have signed a reciprocal agreement with the Local 641 Fund. In addition to determining eligibility for benefits, Related Pension Credits also count for purposes of benefit accrual. The Local 641 Fund documents unambiguously have a fifteen year "cliff vesting" schedule[2] for pro rata pensions—that is, a participant is required to earn fifteen years of Combined Pension Credits before any pro rata pension is paid. Neither of these reciprocal agreements were revised following the passage of ERISA in 1974, nor was the Local 641 Fund Plan amended to reduce the eligibility period to less than fifteen years.

After he had attained the normal retirement age of sixty-five, on November 11, 1993, Smith applied to the Local 641 Fund for a pro rata pension. As petitioners concede in their petition, Pet. at 4, the Local 641 Fund explicitly found that Smith had earned one-half year of Related Pension Credits in

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[2] An "all or nothing" vesting schedule "under which the benefits an employee accrued with each year of service did not vest at all until he completed ten years of service, at which point they fully vested" is referred to as "cliff" vesting. *See Freeman v. Central States, Southeast And Southwest Areas Pension Fund*, 32 F.3d 90, 93 n.8 (4th Cir. 1994); *Blessit v. Retirement Plan For Employees Of Dixie Engine Co.*, 848 F.2d 1164, 1177 (8th Cir. 1988) (*en banc*).

the Local 202 Fund, and six and one-half years of Related Pension Credits in the Local 816 Fund for a total of seven years of Related Pension Credits for vesting purposes. It also found that Smith had four years of Covered Employment, which it added to the Related Pension Credits to find that Smith had a total of eleven years of Combined Pension Credits. By making this finding, which has never been retracted at any point during the litigation, the Local 641 Fund explicitly *credited rather than disregarded for vesting or eligibility determination purposes*, Smith's service within the jurisdiction of the Local 202 and Local 816 Funds.

Instead of disregarding Smith's Related Service, the Local 641 Fund in fact denied Smith a pro rata pension solely "(b)ecause Smith had earned less than the 15 years of combined pension credits required [by the Local 641 Fund Plan] for a pro rata pension." Pet. at 4. Smith timely appealed the Local 641 Fund's initial denial of his request for a pro rata pension, specifically raising to the Trustees his claim that ERISA, particularly 29 U.S.C. § 1053, allowed no more than a ten-year "cliff vesting" schedule. In response, the Local 641 Fund claimed that ERISA "is not applicable. Eligibility for pension benefits from this fund is based on the plan rules and regulations of Teamsters Local 641 Pension Fund." Further correspondence between the Local 641 Fund and Smith's attorney confirmed the Fund's position.

At no point in their pleadings, during discovery or at summary judgment did any of the petitioners assert that the actuarial soundness of the Local 641 Fund would be placed at risk if the maximum cliff vesting schedule were reduced from fifteen to ten years, nor did they allege that any level of benefits would not be paid, nor that they were realistically contemplating benefit increases that would be jeopardized by the requested reformation of the Plan. As a result, no discovery was taken on any such point or concern, and hence there is no evidence of record concerning the effect, if any,

that reformation of the Plan would have on the Local 641 Fund.

ARGUMENT

I. THE APPLICATION OF ERISA'S VESTING REQUIREMENTS TO MULTIEMPLOYER PENSION PLANS OFFERING PRO RATA RETIREMENT BENEFITS IS ENTIRELY CONSISTENT WITH THE LANGUAGE, POLICY AND PREVIOUS CONSTRUCTION OF 29 U.S.C. § 1053(a)

In seeking certiorari, petitioners' first question asks this Court to declare that ERISA's carefully crafted vesting schedules cannot be applied to pension plans that offer one particular type of pension benefit, *viz* pro rata pensions. Petitioners offer no basis in either the statutory language or policy for such an extraordinary exception to a central provision of this "comprehensive and reticulated statute". *See Nachman Corp., supra,* 446 U.S. at 361.

Petitioner's position simply cannot be squared with the definitions provided in the statute. 29 U.S.C. § 1003(a) states that ERISA applies to any "employee pension benefit plan." There is no question that the Local 641 Fund is an "employee pension benefit plan" within the meaning of 29 U.S.C. § 1002(2), and hence, an "employee pension benefit plan" within the meaning of 29 U.S.C. § 1002(3). Nor can it be doubted that if the Local 641 Fund provided only pro rata pensions, it would still qualify as an "employee pension benefit plan" as such a plan would still "provide() retirement income to employees", meeting the disjunctive tests for plan status under 29 U.S.C. § 1002(2). Moreover, the Local 641 Fund's pro rata pension benefit is a "benefit under the plan commencing at the normal retirement age", thereby qualifying as a "normal retirement benefit" as defined in 29 U.S.C. § 1002(22). As to each of these points, the petitioners have

never argued to the contrary, and any such argument at this late stage is waived.

Given these definitions, there can be no doubt that ERISA's vesting provisions, 29 U.S.C. § 1053(a), apply to the Local 641 Fund's pro rata pension benefit. The statute requires that "(e)ach pension plan shall provide that an employee's right to his normal retirement benefit is nonforfeitable upon the attainment of normal retirement age . . ." and that the plan's meet one of several vesting schedules. There can be no legitimate question that "shall provide" makes this provision mandatory on the Local 641 Fund when, as demonstrated directly above, it has made the decision to offer participants a pro rata pension.

Establishment of fair vesting schedules was a major motivation for enacting ERISA. Congress found "that despite the enormous growth in [employee benefit] plans many employees with long years of employment are losing anticipated retirement benefits owing to the lack of vesting provisions in such plans. . ." 29 U.S.C. § 1001(a). As this Court found, "ERISA was designed to prescribe minimum vesting and accrual standards in response to such problems." *See Alessi*, 451 U.S. at 510 n.5. Congress responded to this finding by explicitly declaring it to "be the policy of this Act to protect . . . the interests of participants and their beneficiaries by improving the equitable character and the soundness of such plans by requiring them to vest the accrued benefits of employees with significant periods of service . . ." 29 U.S.C. § 1001(c). For purposes of this litigation, the "significant period of service" that Congress determined was necessary for a cliff vesting scheme was ten years, *see* 29 U.S.C. § 1053(a)(2)(A), although as petitioners point out, Pet. at 2 n.1, Congress subsequently reduced that period to five years.

As this Court noted, "Section 203(a) is a central provision in ERISA. It requires generally that a plan treat an

employee's benefits, to the extent they have vested by virtue of his having fulfilled age and length of service requirements no greater than those specified in § 203(a)(2), as not subject to forfeiture. A provision in a plan which purports to sanction forfeiture of vested benefits for any reason, other than one listed in subsection (a)(3), would violate this section . . ." *See Nachman Corp.*, 446 U.S. at 366 n.10. In reforming the Plan of the Local 641 Fund to reduce the fifteen year cliff vesting provision for pro rata pensions to the statutory ten years, the Third Circuit simply followed *Nachman*. Pursuant to the relevant collective bargaining agreement, Nachman Corp. had established a pension plan that offered several different types of pension benefits. For some of these benefits, including a normal pension, a ten-year cliff vesting schedule was mandated; for at least one other type of benefit, fifteen years' service was required to make the benefit non-forfeitable. While noting that the pension plan had been terminated one day prior to ERISA's effective date, this Court opined that "(t)he 15-year vesting provisions would not have complied with the minimum vesting standards in Title I of ERISA. . ." 446 U.S. at 363-4 and n. 6. The Third Circuit held no more in this case.

Not only is the decision below entirely in keeping with this Court's teaching, there is simply no precedent that pro rata pension benefits are exempt from the various ERISA substantive requirements. Rather, every Court that has considered such benefits has found that the applicable ERISA substantive standards apply. *See, e.g., Tanzillo v. Local Union 617, International Brotherhood Of Teamsters*, 769 F.2d 140 (3d Cir. 1985) (ERISA explicitly deemed to apply, although pre-ERISA break-in-service rules held applicable to plaintiff's claim for pro rata pension); *Hoover v. Cumberland, Maryland Area Teamsters Pension Fund*, 756 F.2d 977, 981 (3d Cir. 1985) (ERISA benefit accrual rules held applicable to pro rata type pension); *Jenkins v. Local 705 International*

Brotherhood Of Teamsters Pension Plan, 713 F.2d 247 (7th Cir. 1983) (ERISA limitations provisions govern claims for pro rata pension benefit); *Kagarise v. Cumberland, Maryland Area Teamsters Pension Fund*, 661 F.2d 19 (3d Cir. 1981) (ERISA governs standards for judicial review of calculation of pro rata pension benefits); *Phillips v. Teamsters Local 639 Employers Health & Pension Trust*, 79 F.Supp.2d 847 (N.D. Ohio 2000) (ERISA governs review of Trustees calculation of pro rata pension benefit); *Bianco v. Board of Trustees of Local 816 Labor And Management Pension Trust Fund*, 494 F.Supp. 206 (E.D.N.Y. 1980) (ERISA break-in-service rules held applicable to claim for pro rata pension); *Helms v. Local 705, Int'l Brotherhood Of Teamsters Pension Plan*, 1999 WL 965230 (N.D.Ill. Sept. 30, 1999) (ERISA required vesting schedule held applicable to pro rata-type pension). Ten year vesting requirements for pro rata pensions are hardly unknown. *See Manhattan Eye Ear & Throat Hospital v. NLRB*, 942 F.2d 151, 158 (2d Cir. 1991).

Further, petitioners' suggestion that pro rata pensions be exempt from ERISA's vesting requirements cannot be reasonably cabined and necessarily leads to absurdity. If ERISA's vesting schedules do not apply to the Local 641 Fund's pro rata pension, then petitioners would be justified in maintaining not just a fifteen-year cliff vesting schedule, but equally well one of twenty-five, thirty-five or even seventy-five years. Indeed, no vesting schedule at all could be required, allowing such accrued benefits to be forfeited at whim. However, as demonstrated above, such overly long vesting schedules were precisely the evil that Congress meant to redress in enacting vesting requirements. Petitioners' first question asks this Court to sanction an absurd result. "(I)nterpretations of a statute which would produce absurd results are to be avoided if alternative interpretations consistent with the legislative purpose are available." *See*

Griffin v. Oceanic Contractors, Inc., 454 U.S. 564, 575 (1982) (citations omitted).

The Third Circuit's holding that ERISA's vesting schedules must be applied to pension funds offering pro rata pensions is consistent with this Court's decision in two major decisions, the clear language of the statute, all available precedent and ERISA's explicit policy to require appropriate vesting. There is no need to waste this Court's valuable resources by returning to such well-plowed ground.

II. THE COURT BELOW PROPERLY FOUND THAT 29 U.S.C. § 1053(B)(1)(C) DID NOT ALLOW PETITIONERS TO DISREGARD SERVICE FOR VESTING PURPOSES THAT THEY THEMSELVES HAD COUNTED FOR BOTH VESTING AND ACCRUAL BENEFIT PURPOSES

Petitioners' second question urges this Court to find that they could "disregard" Smith's Related Service in the Local 202 and the Local 816 Funds because of the "may disregard" language of 29 U.S.C. § 1053(B)(1)(C). To present a case or controversy sufficient to merit this Court's attention, petitioners would need to adduce some evidence that they did in fact disregard this service when Smith applied for his pro rata pension. However, this record could not be clearer that petitioners did not in fact disregard Smith's Related Service. At every level of consideration of Smith's claim, petitioners have in fact credited Smith with eleven years of credits for vesting purposes i.e., Smith's six and one-half years of service in the Local 816 Fund and one-half year of service in the Local 202 Fund were in fact credited to him along with his four years of service in the Local 641 Fund. Smith was not denied the pro rata pension because he had only four years of service as a result of disregarding his service in the Local 816 and Local 202 Funds, but rather because the plan documents

required fifteen years of Combined Service and Smith had but eleven. The record is thus clear that throughout the course of this litigation, petitioners did not in fact disregard Smith's seven years of Related Service. This Court has no good reason to allow petitioners to press what is in essence a hypothetical case unrelated to their actual conduct in this matter.

Petitioners sought to escape from the plain meaning of their admissions by urging that they were simply counting the Related Service for purposes of benefit accrual, not for vesting purposes. But once petitioners admit that the Related Service "counts" towards determining the amount of the benefit to be paid, Congress made clear that petitioners must count the Related Service for computing whether the benefit vests.

> *Service credited for vesting purposes*
>
> Generally, under the conference substitute, once an employee becomes eligible to participate in a pension plan, all his years of service with an employer (including preparticipation service, and service performed before the effective date of the Act) are to be taken into account for purposes of determining his place on the vesting schedule. However, the plan may ignore periods for which the employee declined to make mandatory contributions, and periods for which the employer did not maintain the plan or a predecessor plan, as defined in Treasury regulations (*i.e. if the plan provides past service credits for purposes of benefit accrual, it must also provide past service credits for purposes of participation and vesting*).

Conf. Report on P.L. 93-406, *as reprinted in* 1974 U.S. Code.Cong & Ad. News at p. 5050 (emphasis added).

In sum, there is no need for this Court to take up the hypothetical question that petitioners have presented.

III. AS PETITIONERS NEVER RAISED IN EITHER THE DISTRICT OR THE CIRCUIT COURT THE ISSUE OF THE FINANCIAL IMPACT THAT REFORMATION TO CONFORM WITH 29 § U.S.C. 1053(a)(2)(A) WOULD HAVE ON THE LOCAL 641 FUND, THIS COURT SHOULD NOT TAKE UP SUCH A NEWLY RAISED CLAIM

Petitioners urge this Court to take up this matter as sufficiently important because the Third Circuit's holding will cost the Local 641 Fund money. While Smith agrees that the Local 641 Fund will likely incur some additional financial liability, the same can be said about nearly any unsuccessful litigant, even in the most banal, garden-variety tort case, and hardly renders the instant matter important enough for this Court to expend its resources in consideration thereof.

Petitioners do not spell out for this Court what this impliedly catastrophic sum would be for the very simple reason that the record contains no evidence whatsoever on this point, and therefore furnishes no basis for appraising the claim. This lack of record evidence is due entirely to the failure of petitioners to have raised their implicit claim of financial catastrophe or actuarial unsoundness in either the District Court or the Circuit Court. On this record, petitioners' claim, that this ruling "will ultimately impact upon other participants, because the plans will be unable to increase benefits", *see* Pet. at 7, is the rankest speculation. Such an argument should not for the first time be presented in the Petition.

CONCLUSION

For all of the foregoing reasons, Respondent Stanley Smith respectfully requests that this Honorable Court deny the Petition for a writ of certiorari.

Respectfully Submitted,

DAVID TYKULSKER, ESQ.*
DAVID TYKULSKER & ASSOCIATES
161 Walnut Street
Montclair, New Jersey 07042
(973) 509-9292

Counsel for Respondent
Stanley Smith

* Counsel of Record